



MOREE PLAINS SHIRE COUNCIL

26 SEPTEMBER 2019

**COMMUNITY DEVELOPMENT
AND SERVICES
COMMITTEE MEETING**

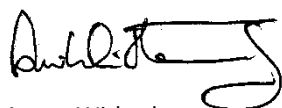
**ADOPTED PUBLIC BUSINESS PAPER
AND MINUTES**

- TO:
- Councillors
 - General Manager
 - Director – Corporate Services
 - Director – Planning and Community Development
 - Director – Engineering Services
 - Manager – Water and Waste
 - Manager – Executive Projects

Notice is hereby given that the **Community Development and Services Committee Meeting** will be held in the Council Chamber, the Max Centre, 30 Heber Street, Moree, on **Thursday, 26 September 2019** commencing at **2pm**.

Please note that all Council meetings are recorded.

Yours sincerely



Angus Witherby

DIRECTOR PLANNING AND COMMUNITY DEVELOPMENT

Agenda

1. Open Meeting
2. Apologies
3. Confirmation of Minutes
4. Declarations of Interest
5. Reports
 - 1) Draft Community Participation Plan
 - 2) Draft Compliance and Enforcement Policy
 - 3) Question on Notice responses
6. Standing agenda item: New Questions on Notice
7. Standing agenda item: Strategic Planning Proposals and Current Project Updates
8. Standing agenda item: Inland Rail Update
9. Standing agenda item: Overseas Trade and Investment
10. Close meeting

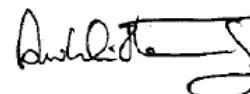
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DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

Community Development and Services Committee Meeting Adopted Public Minutes and Business Paper

26 September 2019

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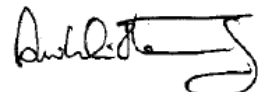
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MINUTES OF THE COMMUNITY DEVELOPMENT AND SERVICES COMMITTEE MEETING OF THE MOREE PLAINS SHIRE COUNCIL HELD IN THE COUNCIL CHAMBER, HEBER STREET, MOREE ON THURSDAY, 26 SEPTEMBER 2019, COMMENCING AT 2.00PM

READ ALOUD:

- Audio Recording Declaration.
- Emergency Response and General Housekeeping Declaration.

PRESENT:

Councillors K Cassells (Chair), K Humphries (Mayor), G Smith (Deputy Mayor), J Crawford, M Montgomery AM, S Price OAM, S Ritchie and J Tramby OAM.

IN ATTENDANCE:

Mr M Johnson (Acting General Manager), Mr M Connolly (Acting Director Planning & Community Development), Mr B Turner (Acting Director Engineering Services), Ms L Carter (Integrated Planning and Reporting Manager), Mr Amos (Team Leader Planning), Mr D Graham (Environment and Compliance Manager), Ms V Dawson (Executive Assistant, Planning & Community Development), Ms Therese Smith (Executive Assistant, Corporate Services), Ms A Gemmell-Smith (Integrated Planning and Reporting & Executive Coordinator), Ms D Murray (Executive Assistant), Ms A Colbran (Governance Coordinator), Ms S Pearse (Acting Manager Economic Development and Grants), Ms L Colley (Grants/ Economic Development Officer)

APOLOGIES:

19/09/01 RESOLVED (MOVED:MONTGOMERY/ SECONDED:SMITH)

That council accept the below apologies;

Cr G Chui, Mr Rodgers and Mr Witherby

LEAVE OF ABSENCE:

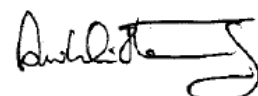
Nil.



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MINUTES:

Minutes from the Community Development and Services Committee Meeting held 22 August 2019.

19/09/02 RESOLVED (MOVED:MONTGOMERY/ SECONDED:SMITH)

That the minutes from the Community Development and Services Committee Meeting held on 22 August 2019 be adopted.

DECLARATIONS OF INTEREST:

Nil.

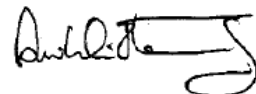
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**DIRECTOR OF PLANNING AND COMMUNITY
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Report Title	1. Draft Community Participation Plan
Report by	Executive
Contact	Murray Amos/Libby Carter
Attachments	One (1) attachment; refer to Attachments section
File	FILE19/569

RECOMMENDATION

1. That the Draft Community Participation Plan be placed on public exhibition for a period of 28 days for public comment.
2. That Council adopt the Community Participation Plan if there are no submissions from the public after the conclusion of the public exhibition period and that if any submission is received, that the Community Participation Plan be brought back to Council for consideration prior to its adoption.

19/09/03 COMMITTEE RECOMMENDATION (MOVED:HUMPHRIES/ SECONDED:PRICE)

1. **Councillors be provided additional time to review the contents of the Draft Community Participation Plan and return comments within two weeks to the Integrated Planning and Reporting Manager. Then the Draft Community Participation Plan (unless any significant comments are received) will be placed on public exhibition for 28 days for public comment.**
2. **That Council adopt the Community Participation Plan if there are no submissions from the public after the conclusion of the public exhibition period and that if any submission is received, that the Community Participation Plan be brought back to Council for consideration prior to its adoption.**

REPORT

ALIGNMENT WITH MOREE PLAINS 2027 – YOUR SHIRE. THE PLAN. OUR FUTURE

- An Inclusive, Caring Community**
C1.5 Understand the services and programs which are being delivered locally to build capacity in our families and, where necessary, support the coordination of these efforts
- Sustainable Spaces and Places**
S2.1 Ensure adequate services, facilities and plans are in place to minimise service interruptions and to cater for current and future demand

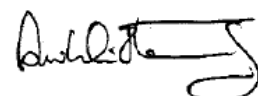
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A Vibrant Regional Economy

Not applicable

A Leading Organisation

L3.4 Foster a better understanding within the community of services and facilities available through Council

BACKGROUND AND KEY ISSUES

The *Environmental Planning and Assessment Act 1979* (NSW) requires councils to develop a Community Participation Plan (**the Plan**) for their local government area. Councils are required to have a draft Plan on display for 28 days. Councils are to submit an adopted final Plan to NSW Planning by 1 December 2019.

The purpose of the Plan is to provide a single document that clearly states how the community can participate in planning matters. It will combine the existing community engagement approach of Moree Plains Shire Council (**Council**) and the minimum public exhibition timeframes of the legislation for planning functions.

Full details of the community participation obligations are outlined in the accompanying Plan and comprise:

1. An explanation as to the purpose of the Plan;
2. An explanation as to the importance of community engagement in planning;
3. A breakdown of the mandatory and best practice exhibition timeframes and notification requirements;
4. A guide as to how the community can participate in the planning process; and
5. An explanation as to how Council will measure and record community participation.

PURPOSE OF THE COMMUNITY PARTICIPATION PLAN

Since the reform of the *Environmental Planning and Assessment Act 1979* (NSW) in 2018, a council must produce a document that explains to the community how and when they can participate in the planning process.

This is to encourage community participation in order to make decisions that better reflect the wants and needs of the community.

Once the Plan is finalised and published, it will not need to be reviewed any earlier than the next cycle of the Community Strategic Plan in 2027, unless major planning reforms occur.

IMPORTANCE OF THE COMMUNITY PARTICIPATION PLAN

The Plan encourages the community to engage with planning authorities in a more meaningful manner, within the planning legislative framework. It is envisaged that this approach will result in higher levels of community participation in planning decisions but also save Council time and resources by encouraging community engagement through structured and legislated channels.

Meaningful engagement is also an important step in the development of a better relationship with the Shire's community and stakeholders. A strong relationship with our community will increase cooperation and communication for future projects, including those outside of planning.

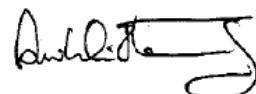
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TIMEFRAMES AND NOTIFICATION REQUIREMENTS

Often one of the most dissuading factors for a community member's participation in the planning process is the strict legislative requirements surrounding making submissions on planning matters. The Plan aims to eliminate this by providing a clear breakdown of when and how a member of the community can make a submission to Council on a planning matter. This puts the power back in the community, making it easier for them to make their opinions heard, in a legislatively compliant manner.

The Plan also clearly outlines who should be notified of a planning matter and what to do if they are not as well as detailing the options available for a community member who did not need to be notified, but felt they should have been.

HOW THE COMMUNITY CAN PARTICIPATE

By clearly outlining engagement methods that will be adopted by Council in the future, a greater awareness of the occurrence and purpose of upcoming community engagement events is likely to be generated.

MEASURING AND RECORDING PARTICIPATION

The Plan establishes a guide for how Council should record community participation in order to assess its effectiveness. The Plan also explains the importance of flexibility and describes when councils should adjust their methods of engagement, when reviewing previous engagement activities and their outcomes.

FINANCIAL IMPACT TO COUNCIL

Review of the requirements for the Plan and preparation of the draft Plan have been undertaken internally by existing Council staff.

STATUTORY AND POLICY IMPLICATIONS

The preparation of the Plan is in response to the 2018 enactment of *Environmental Planning and Assessment Act 1979* (NSW) div 2.6. This division created the statutory requirement for planning authorities, including Councils, to create a Community Participation Plan in accordance with this legislation.

In accordance with the *Environmental Planning and Assessment Act 1979* (NSW) s 2.23, Council must:

- (1) *A planning authority to which this Division applies is required to prepare a community participation plan about how and when it will undertake community participation when exercising relevant planning functions (subject to this section).*
- (2) *A planning authority is to have regard to the following when preparing a community participation plan:*
 - a) *The community has a right to be informed about planning matters that affect it.*
 - b) *Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.*
 - c) *Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.*
 - d) *The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.*

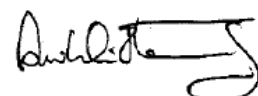
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- e) *Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.*
- f) *Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.*
- g) *Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).*
- h) *Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.*

RISK IMPLICATIONS

The Plan is a statement of Council's commitment to actively engage with the community in regard to planning matters. This creates the potential expectation amongst the community of increased engagement and notification about any planning matters in the community. The risk is that some members may feel they are entitled to notification of planning matters that, under the legislation, we are not required to notify them of. Increased transparency with the community can mitigate the risk of a negative reaction to lack of notification where legislation does not require it.

ASSET MANAGEMENT IMPLICATIONS

No asset management implications have been identified.

PREVIOUS COUNCIL DECISIONS

At the March 2019 Strategic Asset and Works Committee, the requirement for the Plan was discussed and the following resolution was made:

19/03/04 COMMITTEE RECOMMENDATION (SMITH/TRAMBY)

That a draft community participation plan be brought to Council for review prior to being put out public exhibition for 28 days, and then brought back to Council for consideration prior to adoption.

ATTACHMENTS

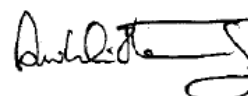
Attachment 1 Draft Community Participation Plan for Moree Plains Shire Council (provided under separate cover)



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(provided under a separate cover)

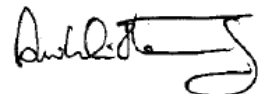
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**DIRECTOR OF PLANNING AND COMMUNITY
DEVELOPMENT**

Report Title	2. Compliance and Enforcement Policy
Report by	Planning and Community Development
Contact	Mark Connolly, Dane Graham
Attachments	One (1) attachment; refer to Attachments section
File	FILE 16/803

19/09/04 COMMITTEE RECOMMENDATION (MOVED:RITCHIE/ SECONDED:SMITH)

That the Council move into Committee of the Whole.

The Council moved into Committee of the Whole at the time being 2.32 pm.

19/09/05 COMMITTEE RECOMMENDATION (MOVED:PRICE/ SECONDED:SMITH)

That the Council move out of Committee of the Whole.

The Council moved out of Committee of the Whole at the time being 3.23 pm.

Cr G Chui joined the Committee meeting at the time being 3.23pm.

RECOMMENDATION

1. That Council workshop the DRAFT Compliance and Enforcement Policy.
2. That Council provide comment on the DRAFT Compliance and Enforcement Policy.

19/09/06 COMMITTEE RECOMMENDATION (MOVED:TRAMBY/ SECONDED:CRAWFORD)

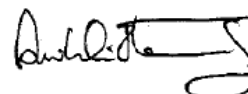
1. **Councillors be provided additional time to review the contents of the DRAFT Compliance and Enforcement Policy and return comments within two weeks to the Environment and Compliance Manager. Then the DRAFT Compliance and Enforcement Policy (unless any significant comments are received) will be placed on public exhibition for 28 days for public comment.**
2. **That Council adopt the Compliance and Enforcement Policy if there are no submissions from the public after the conclusion of the public exhibition period and that if any submission is received, that the Compliance and Enforcement Policy be brought back to Council for consideration prior to its adoption.**



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REPORT

ALIGNMENT WITH MOREE PLAINS 2027 – YOUR SHIRE. THE PLAN. OUR FUTURE

- An Inclusive, Caring Community**
C1.1 Public safety is maximised through support for initiatives that reduce the incidence of crime and promote safety
- Sustainable Spaces and Places**
S4.2 Improve the appearance of our towns and villages
- A Vibrant Regional Economy**
Not applicable
- A Leading Organisation**
L1.2 Deliver the desired services throughout the Shire to meet community needs in an effective, efficient and financially viable way, having regard to compliance and risk obligations

BACKGROUND AND KEY ISSUES

Reason for Policy

Councils have a responsibility to enforce and administer various legislation in the interest of Public Safety and the Environment. Over the past three (3) years council has improved the level of service in the compliance space. Increase in compliance has in part been supported by the community as it has improved the amenity and safety of Moree Plains Shire Council. Other parts of the community have not supported the change. Due to the disparity council identified a need to develop a consistent framework for managing compliance functions. The framework has been structured through a Compliance and Enforcement Policy.

Key Components of Policy

- Setting minimum standards of what the community can expect from council;
- Setting minimum standards of what council can expect from the community;
- Risk based framework to compliance;
- Ensuring transparency, consistency, proportionality and timeliness; and
- Incorporate education into compliance.

FINANCIAL IMPACT TO COUNCIL

No financial implications have been identified.

STATUTORY AND POLICY IMPLICATIONS

This policy outlines how statutory requirements are to be administered in council. At any time where conflicts between this policy and legislation occur the legislation triumphs.

No other statutory or policy implications have been identified.

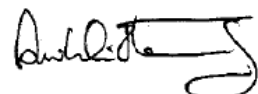
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RISK IMPLICATIONS

The Compliance and Enforcement Policy reduces the reputational risk to council.

No other risk implications identified.

ASSET MANAGEMENT IMPLICATIONS

No asset management implications have been identified.

PREVIOUS COUNCIL DECISIONS

This is the first time this matter has come before Council.

ATTACHMENTS

Attachment 1 DRAFT Compliance and Enforcement Policy

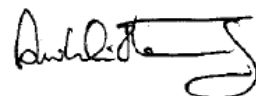
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DRAFT	COMPLIANCE AND ENFORCEMENT POLICY	
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1.0 INTRODUCTION

- 1.1 Council is an enforcement authority under several different pieces of legislation, which requires Council staff to make decisions about appropriate enforcement action when non-compliance is identified.
- 1.2 The Model Compliance and Enforcement Policy published by the NSW Ombudsman in 2015 forms the basis of this policy.

2.0 PURPOSE

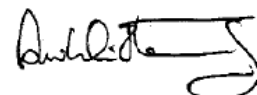
- 2.1 Ensure that the Council's functions are exercised consistently and without bias, in accordance with its obligations under Section 8 of the *Local Government Act 1993*;
- 2.2 provide information for all internal and external stakeholders and interested parties about council's position on compliance and enforcement matters in the local government area.
- 2.3 outline matters to be considered at the various stages of the enforcement process from the receipt and investigation of reports alleging unlawful activity, through to what enforcement option council will choose and whether to commence criminal or civil proceedings.
- 2.4 outline how staff assess whether enforcement action is warranted and what type of enforcement action is appropriate in the particular circumstances.
- 2.5 In certain circumstances council will have shared enforcement responsibilities with other regulatory authorities. This policy sets out a collaborative and cooperative approach to such matters. Advice and guidance is also provided on the role of council in building and construction compliance matters where there is a private certifier, and the role of councillors in enforcement.
- 2.6 Responsible council staff are not limited by this policy in their use of discretion and exercise of official functions. The full circumstances and facts of each case need to be considered and a decision made on the merits.



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3.0 SCOPE

This policy applies to all policies related to compliance and enforcement activities undertaken by Council with exception to Weight of Loads activities.

4.0 DEFINITIONS

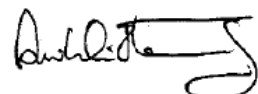
- 4.1 **Authorised Officer** means Staff member of the Council authorised under legislation and by internal delegations to carry out compliance action on behalf of the Council
- 4.2 **Complaint** is an expression of dissatisfaction made about council services, staff or, handling of a complaint, where a response or resolution is explicitly or implicitly expected or, legally required.
For the purposes of this policy, a complaint does not include:
- a. a report alleging unlawful activity (see definition below)
 - b. a request for information about a council policy or procedure
 - c. a request for an explanation of action taken by council
 - d. a request for internal review of council decision.
- 4.3 **Council** means Moree Plains Shire Council.
- 4.4 **Enforcement** means actions taken in response to serious or deliberate contraventions of laws.
- 4.5 **HPE Records Manager** (Records Manager) is Council's current electronic record keeping system.
- 4.3 **Regulation** means using a variety of tools and strategies to influence and change behaviour to achieve the objectives of an Act, Regulation or other statutory instrument administered by council.
- 4.4 **Reporting alleging unlawful activity** means an expression of concern or a request for service in relation to alleged unlawful activity, where a response or resolution is explicitly or implicitly expected or legally required.
- 4.5 **Unlawful activity** is any activity or work that has been or is being carried out:
- a. contrary to the terms and conditions of a development consent, approval, permit or licence;
 - b. contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
 - c. contrary to a legislative provision regulating a particular activity or work;
 - d. without a required development consent, approval, permit or licence;
 - e. contrary to legislation in relation to which the City is the appropriate regulatory authority; and
 - f. includes any activity, place or structure which is a risk to public health and safety but excludes any parking or traffic offences, which are dealt with in accordance with the Australian Road Rules.



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5.0 POLICY STATEMENTS

5.1 Responsibilities

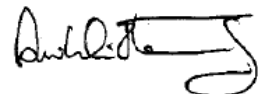
- 5.1.1 The Planning and Community Development Department is responsible for implementing this policy.
- 5.1.2 The Planning and Community Development Department is responsible for the distribution of all policies to community members on request.
- 5.1.3 Managers and Supervisors are responsible for ensuring staff are meeting policy requirements. Staff have a responsibility to be aware and understand those requirements.
- 5.1.4 Council receives information about alleged unlawful activity from members of the public, contact from other government agencies and information gathered by its officers during proactive inspections.
- 5.1.5 All council staff who deal with reports alleging unlawful activity are responsible for implementing this policy. Council staff are also responsible for ensuring that any other possible unlawful activity identified as a result of an inspection, proactive enforcement or other activity is brought to the attention of the appropriate business unit of council.
- 5.1.6 Council Staff are required to:
- a. treat all relevant parties with courtesy and respect;
 - b. communicate with all relevant parties and provide feedback on the progress of any investigation and any reasons for delay without compromising the integrity of the investigation;
 - c. make full and proper records in relation to the assessment and investigation of reports alleging unlawful activity, including reasons for any decisions;
 - d. inform relevant parties of reasons for decisions;
 - e. provide as much information as possible to all relevant parties about the outcomes of investigations to show that adequate and appropriate action was taken and/or is proposed to be taken in response to a report of alleged unlawful activity;
 - f. provide information to all relevant parties about any avenues to seek an internal or external review of a decision.
- 5.1.7 All reports alleging unlawful activity are to be entered into council's case management system and actioned in a timely manner by the appropriate business unit.
- 5.1.8 Only council staff with appropriate delegations from the general manager can undertake investigations or compliance and enforcement action in relation to this policy.



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5.2 Compliance and Enforcement Principles

5.2.1 Accountable and Transparent

- a. acting in the best interests of public health and the environment;
- b. ensuring accountability for decisions to take or not take action;
- c. acting fairly, impartially and without bias or unlawful discrimination;
- d. providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community;
- e. ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy;
- f. acting on any complaints or concerns about the conduct of compliance officers in accordance with council's complaints management policy and procedures;
- g. advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.

5.2.2 Consistent

- a. ensuring all compliance and enforcement action is implemented consistently;
- b. encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts of each matter.

5.2.3 Proportional

- a. ensuring the level of enforcement action is proportionate to the level of risk and seriousness of the breach;
- b. making cost-effective decisions about enforcement action;
- c. taking action to address harm and deter future unlawful activity.

5.2.4 Timely

- a. ensuring responses to reports of alleged unlawful activity and decision making in relation to those is timely and in accordance with relevant legislation.

5.3 Responding to concerns about unlawful activity

5.3.1 How reports alleging unlawful activity will be dealt with by council

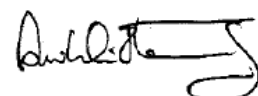
- a. council will record and assess every report alleging unlawful activity. Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about council's handling of the matter, or the report is anonymous;
- b. not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required;
- c. an investigation of alleged unlawful activity may take a significant amount of time to complete, particularly where the issues are complex. If council decides to investigate, staff will give the person who reported the alleged unlawful activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean



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- that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation;
- d. decisions about what action should be taken by council are made at the council's discretion. This means the objective is that reports alleging unlawful activity will be resolved to the satisfaction of council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action;
 - e. council staff will endeavour to manage the expectations of people who report alleged unlawful activity, and in particular explain that in the absence of sufficient evidence of unlawful activity, council may be unable to take further action. They will also explain that council does not have unlimited resources and powers to deal with reports alleging unlawful activity. If council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual.

5.3.2 Confidentiality of people who report allegations of unlawful activity

People who report allegations of unlawful activity should not expect that their identities will remain confidential from the subject of their report in all circumstances. Council may have to disclose information that identifies them in the following cases:

- a. the disclosure is necessary to investigate the matter;
- b. their identity has already been disclosed to the subject of their report directly or in a publicly available document;
- c. the individual was consulted following receipt of a Government Information (Public Access) Act 2009 application and did not object to the disclosure;
- d. the individual consents in writing to their identity being disclosed;
- e. the disclose is required to comply with principles of procedural fairness;
- f. the matter proceeds to court.

5.3.3 What Council expects from people who report allegations of unlawful activity

Council expects that people who report allegations of unlawful activity will cooperate and act in good faith in respect of any investigations conducted by council. This includes:

- a. providing a clear description of the problem (and the resolution sought, if relevant);
- b. giving all available and relevant information to council, including any new information about the alleged activity that may become known to the person following the making of their report;
- c. not giving any information that is intentionally misleading or wrong;
- d. cooperating with council's inquiries and giving timely responses to questions and requests for information;
- e. treating council's staff with courtesy and respect;
- f. allowing the investigation to be completed without prematurely taking the matter to other agencies unless referred to by council.

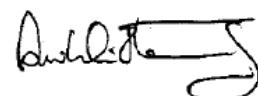
If these expectations of the individual are not met, council may need to set limits or conditions on the continuation of the investigation or may need to restrict any further communications with the individual.



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5.3.4 **What parties can expect from council staff**

People who report alleged unlawful activity, as well as individuals or businesses that are subject to investigation and any enforcement action, can expect that council staff will:

- a. treat them with courtesy and respect in accordance with councils organisational values;
- b. advise them of the outcome of the allegation reported, including a full explanation of the reasons why that outcome was considered to be reasonable in the circumstances;
- c. clearly explain decisions in clean English;
- d. provide information about any relevant internal and external appeal process that may be available;
- e. carefully assess any new information provided by any party after any decision has been made and advise whether further action will be taken.

5.3.5 **Complaints about council's enforcement actions**

Any complaints about council's handling of reports alleging unlawful activity will be recorded separately and handled in accordance with council's complaints management procedures.

Where a person or organisation subject to enforcement action merely disputes council's decision to take enforcement against them, they will be directed to make representations in accordance with any relevant internal and external appeal processes.

Council staff will act on any complaints about the conduct of compliance officers in accordance with council's complaints management policy and procedures and the code of conduct.

5.3.6 **Anonymous reports**

Anonymous reports will be recorded and assessed in accordance with the above requirements. However, because it is not possible to seek clarification or additional information about a matter, it may be more difficult to evaluate the allegations and therefore these reports are less likely to warrant investigation.

5.3.7 **Unlawful activity outside business hours**

Unlawful activity can occur outside business hours. In particular, council may receive reports about matters such as offensive noise and failure to comply with limitations on hours of operation during nights and weekends.

Due to resource and operational capability restraints on council, investigations into alleged unlawful activity outside business hours will be assessed on the basis of risk of harm to health, welfare, safety, property or the environment or it is otherwise in the public interest to take such action.

5.3.8 **Neighbour disputes**

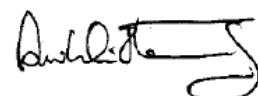
When a dispute between two neighbours is a civil matter, council will often have no authority to resolve the issue in dispute, in such cases parties may be referred to LawAccess NSW and Community Justice Centres.



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5.4 Investigating alleged unlawful activity

Not all reports alleging unlawful activity will warrant investigation. A preliminary assessment of all matters will be made to determine whether investigation or other action is required. Council will prioritise matters on the basis of risk to public safety, human health and environment.

5.4.1 Circumstances where no action will be taken

Council will take no further action if, following a preliminary assessment, it is identified that:

- a. council does not have jurisdiction to investigate or is not the appropriate authority to take action on the issues raised. Where there is another appropriate authority or course of action, council may bring the matter to the attention of the authority or provide information and contact details to the individual. For example SafeWork NSW for workplace safety matters, the NSW Environment Protection Authority for possible environmental offences and Community Justice Centres NSW for personal disputes;
- b. the report relates substantially to a matter previously determined by council and no new or compelling information is presented which would cause council to change its earlier decision;
- c. the allegations relate to a lawful activity (e.g. where there is an existing approval or the activity is permissible without council approval or consent being required);
- d. the report is not supported with evidence or appears to have no substance;
- e. the relevant manager, director or the general manager determines that investigation or other action would have an unreasonable impact on resources and/or is unlikely to achieve an outcome sufficient to justify the expenditure of resources.

5.4.2 Relevant factors guiding decisions as to whether to take action

When deciding whether to investigate, council will consider a range of factors including whether:

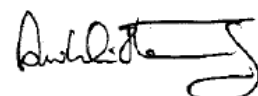
- a. the activity is having a significant detrimental effect on the environment or it constitutes a risk to public safety;
- b. the report is premature as it relates to some unfinished aspect of work that is still in progress;
- c. the activity or work is permissible with or without permission;
- d. all conditions of consent are being complied with;
- e. much time has elapsed since the events the subject of the report took place;
- f. another body is a more appropriate agency to investigate and deal with the matter;
- g. it appears there is a pattern of conduct or evidence of a possible wide spread problem;
- h. the person or organisation reported has been the subject of previous reports;
- i. the report raises matters of special significance in terms of the council's existing priorities;
- j. there are significant resource implications in relation to an investigation and any subsequent enforcement action;
- k. whether the complaint is trivial, frivolous or vexatious;
- l. it is in the public interest to investigate the report.



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The above are factors for council to consider and weigh in making a determination. Council staff are not limited in their use of discretion by these considerations and may decide to investigate based on these and other factors. Any decision not to investigate an allegation of unlawful activity will be recorded and the reasons for that decision clearly outlined.

5.5 Taking enforcement action

When deciding whether to take enforcement action in relation to a confirmed case of unlawful activity, council will consider the full circumstances and facts of the matter and the public interest. The following common considerations will assist council staff in determining the most appropriate response in the public interest:

5.5.1 Considerations about the alleged offence and impact:

- a. the nature, extent and severity of the unlawful activity, including whether the activity is continuing;
- b. the harm or potential harm to the environment or public health, safety or amenity caused by the unlawful activity;
- c. the seriousness of the breach, including whether the breach is merely technical or trivial in nature;
- d. the time period that has lapsed since the date of the unlawful activity.

5.5.2 Considerations about the alleged offender:

- a. any prior warnings, instructions, advice that was issued to the person or organisation reported or previous enforcement action taken against them;
- b. whether the offence was committed with intent;
- c. whether the person or organisation reported has been proactive in the resolution of the matter and assisted;
- d. with any council requirements and instructions;
- e. any mitigating or aggravating circumstances demonstrated by the alleged offender;
- f. any particular circumstances of hardship affecting the person or organisation reported.

5.5.3 Considerations about the impact of any enforcement action

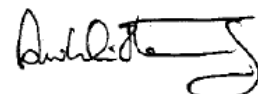
- a. the need to deter any future unlawful activity whether an educative approach would be more appropriate than a coercive approach in resolving the matter;
- b. the prospect of success if the proposed enforcement action was challenged in court;
- c. the costs and benefits of taking formal enforcement action as opposed to taking informal or no action;
- d. what action would be proportionate and reasonable in response to the unlawful activity;
- e. whether council is prevented from taking action based on earlier advice given, ie whether an estoppel situation has been created.



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5.5.4 Considerations about the potential to remedy:

- a. whether the breach can be easily remedied;
- b. whether it is likely consent would have been given for the activity if it had been sought;
- c. whether there is a draft planning instrument on exhibition that would make the unauthorised use legal.

5.5.5 Legal or technical issues

Where legal and/or technical issues are in question, council staff will consider whether legal advice or professional advice from duly qualified staff or other experts should be obtained and considered. Council may also require a person subject to possible enforcement action to obtain professional advice in relation to issues of concern to council for assessment as to whether further action is required.

5.5.6 Requirements of council staff considering enforcement action

Prior to taking enforcement action, council staff will take into account the above considerations as well as the evidence gathered during their investigation. Council staff must act impartially, be mindful of their obligations under council's code of conduct and not act as a decision-maker in relation to any matter in which they have a personal interest. Enforcement action will not be taken purely as a response to the conduct of an individual such as persistent demands or threats.

Council staff are required to maintain records about critical thinking and decision-making processes in relation to reports alleging unlawful activity and any enforcement action, as well as records of interactions with relevant parties. Council staff will at all times adhere to council's internal approval processes prior to the commencement of any enforcement action.

Council staff will take steps to ensure that any enforcement action is taken against the correct person or organisation. Where there are multiple possible parties to an alleged unlawful activity, it will generally not be appropriate to take enforcement action against every person who may be liable for the alleged unlawful activity. In such circumstances, council staff will be guided by legal advice in determining the appropriate persons to pursue.

5.6 Options for dealing with confirmed cases of unlawful activity

Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options. Council staff will use discretion to determine the most appropriate response to confirmed cases of unlawful activity and may take more than one approach.

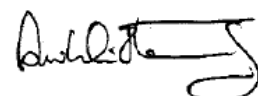
Any enforcement action taken by council will depend on the full circumstances and facts of each case, with any decision being made on the merits.



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At all times, council's key concerns are:

- a. to prevent or minimise harm to health, welfare, safety, property and the environment
- b. to influence behaviour change for the common good and on behalf of the community.

The following enforcement options to be considered by council are ordered to reflect an escalation in response that is proportionate to the level of risk, the seriousness of the confirmed breach or the need for a deterrent:

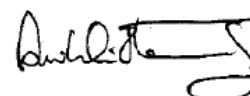
Level of risk	Enforcement examples based on risk (Figure 1)
Low	<ul style="list-style-type: none">• take no action on the basis of a lack of evidence or some other appropriate reason;• negotiating with the person to obtain voluntary undertakings or an agreement to address;• provision of information/education/advice on how to be compliant.• issuing a warning or a formal caution.
Medium	<ul style="list-style-type: none">• the issues of concern issuing a warning or a formal caution;• issuing of a penalty notice if the risk has potential to increase.
High	<ul style="list-style-type: none">• issuing a letter requiring work to be done or activity to cease in lieu of more formal action;• issue of relevant enforcement action under the relevant legislation• issuing a penalty notice for non-compliance with previous direction or if the risk has potential to increase.
Extreme	<ul style="list-style-type: none">• seeking an injunction through the courts to prevent future or continuing unlawful activity;• commence legal proceedings for an offence against the relevant Act or Regulation.• issue of relevant enforcement action under the relevant legislation• issuing of a penalty notice



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Figure 1. Risk Matrix

Risk Assessment	Consequences <i>What would occur</i>				
	Insignificant (I)	Minor (MI)	Moderate (MO)	Major (MA)	Catastrophic (C)
Likelihood					
Almost Certain (AC)	Medium 8	High 16	High 20	Extreme 23	Extreme 25
Likely (L)	Medium 7	Medium 12	High 17	High 21	Extreme 24
Possible (P)	Low 4	Medium 10	High 15	High 18	High 22
Unlikely (U)	Low 2	Low 5	Medium 11	Medium 13	High 19
Rare (R)	Low 1	Low 3	Medium 6	Medium 9	High 14

5.6.1 Following up on enforcement action

All enforcement action will be reviewed and monitored to ensure compliance with any undertakings given by the subject of enforcement action or advice, directions or orders issued by council. Reports alleging continuing unlawful activity will be assessed and further action taken if necessary. If the unlawful activity has ceased or the work has been rectified, the matter will be resubmitted for follow up action to ensure compliance outcomes are met. Should initial enforcement action be found to have been ineffective, council staff will consider other enforcement options.

5.6.2 Penalty Notices

Penalty notices are a way of imposing a fine on a person who an authorised officer believes is guilty of an offence without commencing criminal proceedings against them. Generally, penalty notices are appropriate where:

- a. the breach is not serious or ongoing, the degree of harm is low;
- b. the facts appear incontrovertible;
- c. the imposition of the penalty is likely to provide a practical and viable deterrent; and
- d. there are no aggravating factors.

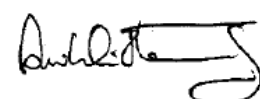
Authorised officers can issue penalty notices in accordance with their statutory responsibilities and delegations, this policy and any guidelines or operating procedures.

Penalty notices are not appropriate where the breach is on-going or where the prescribed penalty is not adequate to address the severity of the offence. For example, repeated issuing of penalty notices is not appropriate where there have been ongoing instances of unauthorised activity such as ongoing non-compliance with conditions of consent. Council staff should also consider whether it is appropriate to issue a formal caution as an alternative to issuing a penalty notice in appropriate circumstances and in accordance with the Attorney-General's Caution Guidelines.



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Where an authorised officer proposes (after conducting an investigation of a complaint and assessing the circumstances of the matter in accordance with the criteria outlined above) to issue a penalty notice, the issue of that notice should only be in circumstances where the authorised officer is satisfied that there is sufficient evidence to establish that the offence was committed.

In circumstances where it is proposed to issue a penalty notice on the basis of information provided only by a complainant (i.e. a person who is not a Council staff member) the evidence must include a statutory declaration signed by the proposed witness and confirmation that the witness is prepared to give evidence in court if necessary.

Wherever possible it should also include objective evidence demonstrating the offence, for example, photographs. Council staff should be particularly cautious when issuing penalty notices based only on evidence provided by a complainant in such circumstances the matter should be referred to the Council's lawyer for advice.

5.7 Taking legal action

The council and its delegated staff will be guided by legal advice in deciding whether to commence criminal or civil proceedings and will consider the following:

- a. whether there is sufficient evidence to establish a case to the required standard of proof;
- b. whether there is a reasonable prospect of success before a court;
- c. whether the public interest warrants legal action being pursued.

5.7.1 **Whether there is sufficient evidence to establish a case to the required standard of proof**

Council considers the decision to take legal action a serious matter, and as such will only initiate and continue proceedings once it has been established that there is admissible, substantial and reliable evidence to the required standard of proof.

The basic requirement of any criminal prosecution is that the available evidence establishes a prima facie case. The prosecutor is required to prove the elements of the offence beyond reasonable doubt.

In civil enforcement proceedings, council will require sufficient evidence to satisfy the court that an actual or threatened breach has occurred on the balance of probabilities.

5.7.2 **Whether there is a reasonable prospect of success before a court**

Given the expense of legal action council will not take legal action unless there is a reasonable prospect of success before a court. In making this assessment, council staff will consider the availability, competence and credibility of witnesses, the admissibility of the evidence, all possible defences, and any other factors which could affect the likelihood of a successful outcome.

5.7.3 **Whether the public interest requires legal action be pursued**

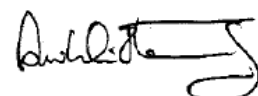
The principal consideration in deciding whether to commence legal proceedings is whether to do so is in the public interest. In making this determination, the same factors to be



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considered when taking enforcement action apply. (See Section 5.5, Taking enforcement action).

The following considerations relate more specifically to the decision to commence legal proceedings and will assist council and its delegated staff in making this determination:

- a. the availability of any alternatives to legal action;
- b. whether an urgent resolution is required (court proceedings may take some time);
- c. the possible length and expense of court proceedings;
- d. any possible counter-productive outcomes of prosecution;
- e. what the effective sentencing options are available to the court in the event of conviction;
- f. whether the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive.

5.7.4 Time within which to commence proceedings

Council staff must be aware of legislative time limits in which enforcement proceedings must be commenced. Sometimes legal action will be statute barred despite good evidence that unlawful activity has occurred.

5.7.5 Delegations

Council staff delegations for taking action under this policy are included in council's Delegation Register.

HISTORY

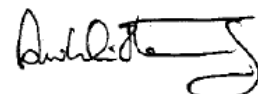
Original Policy	Nil
Policy drafted by	Environment and Compliance
Policy reviewed by Managers' Meeting	21 February 2018
Policy reviewed by MANEX	29 May 2018
Council Resolution Number, if applicable	Not applicable
Date of Adoption	27 June 2017
Review Date	27 June 2021
Classification of Policy	External
This Policy works in conjunction with:	NA



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Report Title	3. Questions on Notice Responses
Report by	Planning and Community Development
Contact	Angus Witherby, Director of Planning and Community Development
Attachments	One (1) attachment; refer to Attachments section
File	FILE 15/183

19/09/07 COMMITTEE RECOMMENDATION (MOVED:MONTGOMERY/ SECONDED:RITCHIE)

That the Community Development and Services Committee receive the Questions on Notice responses for information.

REPORT

ALIGNMENT WITH MOREE PLAINS 2027 – YOUR SHIRE. THE PLAN. OUR FUTURE

- An Inclusive, Caring Community**
Not applicable
- Sustainable Spaces and Places**
Not applicable
- A Vibrant Regional Economy**
Not applicable
- A Leading Organisation**
L1.7 Be accountable and transparent in our affairs, operate with integrity, improve our responsiveness and pursue innovative solutions for organisational improvement

BACKGROUND AND KEY ISSUES

Questions on Notice (**QON**) provide an opportunity for Councillors to ask questions of the General Manager which are then recorded within the meeting minutes and the Moree Plains Shire Council (**Council**)'s Customer Request Management (**CRM**) system. A response to this question is either provided verbally at the meeting or taken on notice if the response requires further research.

In response to requests from Councillors, a QON response system has been implemented where all responses are made available to the public through a Standing Committee Meeting business paper (as per this report). This will ensure that the answers not provided at the meeting are publically available for review by members of the public and Council's transparency is enhanced.

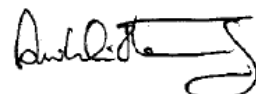
This is Page No. 27 of 32 of the ADOPTED minutes of the COMMUNITY DEVELOPMENT AND SERVICES COMMITTEE MEETING of the Moree Plains Shire Council held on



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FINANCIAL IMPACT TO COUNCIL

Review of the QON's has no significant financial implications.

STATUTORY AND POLICY IMPLICATIONS

Council's Code of Meeting Practice (2016) includes the provision for QON's as part of the Committee Meeting Standing Order of Business. The Code of Meeting Practice is consistent with the *Local Government Act 1993 (NSW)*, the Local Government (General) Regulation 2005 and the Model Code.

RISK IMPLICATIONS

There are no identified risk implications associated with QON responses.

ASSET MANAGEMENT IMPLICATIONS

No asset management implications have been identified.

PREVIOUS COUNCIL DECISIONS

QON responses are provided as part of a Standing Committee Meeting business paper on a regular basis to ensure all responses are made available to the public.

ATTACHMENTS

Attachment 1 Question on Notice responses

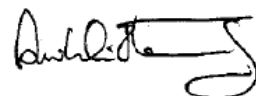
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CRM 3269/2019

Question on Notice – Corporate Services - Councillor Tramby

Councillor Tamby stated that Tamworth now has an electric car recharging station, we should be the next one to get a charging station.

(Finance and Governance Committee Meeting – June 2019)

Response:

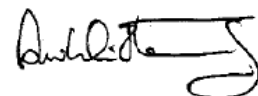
Laura Colley: A letter of support to NRMA was sent April 2019 of which notification is yet to be provided. There has been some interest from local organisations and developers, noting the Economic Development team continues to discuss options with interested companies.



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Questions on Notice:

A formal response to all Questions on Notice will be supplied in report format at a future Committee Meeting. (As per the Code of Practice).

Councillor Humphries:

- 1. Who is on the Moree Cinema Complex Committee? There has been a release of the draft financial risk management plan placed on Moree Thumbs Up Thumbs Down Facebook page, which is very similar to the Kempsey Cinema Plan (June 2017).**

Question taken on notice.

- 2. Concerns about technical matters (such as gas cylinders) on the MAAC application to Stronger Country Communities Fund Round 3.**

This to be taken forward as a matter of urgency as a Mayoral Minute from the Committee meeting to the Council Meeting today, Thursday 26 September 2019 due to applications to the Stronger Country Communities Fund closing Friday 27 September 2019.

Councillor Smith:

- 1. Why was the lease block at Gwydirville, Northern side near Halls Creek, slashed by Council and how much did it cost?**

Question taken on notice.

Councillor Tramby:

- 1. Please outline when and why Council initiated water restrictions at Mungindi.**

Question taken on notice.

- 2. How are loading zones in Moree enforced? Does Council check if people using loading zones are genuine delivery drivers? A problem has been observed where genuine delivery drivers have limited access to loading zones.**

Question taken on notice.

- 3. Please provide an explanation on Council's policy on the pricing of potable water, the availability of on-going potable water, and registration and regulation of potable water carriers.**

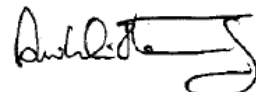
Question taken on notice.



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Councillor Ritchie:

1. Please outline arrangements between MU Group and Council regarding Mr B Turner's employment.

Question taken on notice.

Strategic Planning Proposals and Current Project Updates

Nil.

Moree Inland Rail:

Nil.

Overseas Trade and Investment:

Ms D Murray on behalf of Mr L Rodgers:

Mr Rodgers is travelling privately overseas in the coming weeks and has been invited to:

- the Launch of a new business venture by Mr Edwin Tunn while in Shanghai
- while in Beijing, Professor Leon Sun has invited the General Manager to his book launch which covers the agricultural modernisation of rural areas in China and has based a lot of his proposed strategies and successes realised in Australia.

19/09/08 RESOLVED (MOVED:RITCHIE/SECONDED:PRICE)

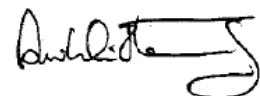
That the Committee endorse the General Manager to attend and officially represent Council at the events with no cost implications to Council.



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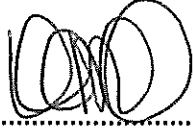
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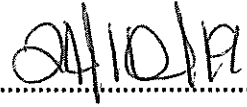
There being no further business, the meeting closed at the time being 3.47 pm

SIGNED BY THE CHAIR OF THE
PLANNING AND COMMUNITY
DEVELOPMENT COMMITTEE, WHOSE
SIGNATURE APPEARS BELOW.




.....
CHAIRPERSON

ADOPTED AT THE PLANNING AND
COMMUNITY DEVELOPMENT
COMMITTEE MEETING OF THE MOREE
PLAINS SHIRE COUNCIL HELD ON.



.....
DATE

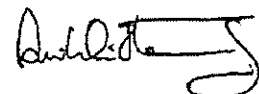
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